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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/909,130	08/11/1997	JAMES E. COX	33019/138/10	1242

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EXAMINER

THOMPSON, KATHRYN L

ART UNIT PAPER NUMBER

3763

DATE MAILED: 11/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/909,130

Applicant(s)

COX ET AL.

Examiner

Kathryn L Thompson

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 1997.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 1, 2, 3, 6, 7, 8, and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4, 5, and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 August 1997 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention: (1) Figures 1-6; (2) Figures 7-17, 27; (3) Figures 18,19; (4) Figures 20-22; (5) Figures 23-24; (6) Figures 25-26; (7) Figures 28-31; (8) Figures 32-34; (9) Figures 35-38.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there are no generic claims.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr. Glenn M. Seager on September 10, 2002, a provisional election was made without traverse to prosecute the invention of Species (9), claims 1, 3, 4, 5, 10, 11, and 12. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2, 6, 7, 8, and 9 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Examiner further withdraws claims 1 and 3 as being drawn to an unelected species. Claims 1 and 3 are drawn to Species 7 and 8.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Saab (US 4,820, 349). Saab discloses a balloon angioplasty catheter comprising an elongated catheter body having a proximal end and a distal end; a balloon including an inflatable envelope portion, the balloon having a proximal end and a distal end; a perfusion lumen (18) extending through the balloon, the perfusion lumen having a proximal end and a distal end, the proximal end of the perfusion lumen being proximate the proximal end of the balloon, the perfusion lumen decreasing distally in cross section within the inflatable envelope portion, wherein the perfusion lumen includes a metallic ribbon coil support (31) (Figure 1).

Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Sahota (US 5,090,958). Sahota discloses a balloon angioplasty catheter comprising an elongated catheter body; a balloon (62); a perfusion lumen (68) extending through the balloon, the perfusion lumen having a distal end and a proximal end; a guidewire lumen, the guidewire lumen being disposed through the perfusion lumen and being collapsible (Column 5, Lines 25-28), during normal use, in the absence of an inserted guidewire (Figure 10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sahota in view of Saab (US 4,820, 349). Sahota teaches all of the claimed limitations except a perfusion lumen including a metallic ribbon coil support and wherein the perfusion lumen distal end has a smaller cross section than the perfusion lumen proximal end. Saab discloses a perfusion lumen including a metallic ribbon coil support (Column 4, Lines 63-68) and wherein the perfusion lumen distal end has a smaller cross section than the perfusion lumen proximal end (Column 4, Lines 35-37). It would have been obvious to one with ordinary skill in the art to use the teachings of Saab to modify the invention of Sahota to provide support and strength to the perfusion lumen so as to prevent it from collapsing under the pressures developed during the dilatation procedure and to provide reduced obstruction and increased cross-sectional flow area within the coronary artery in which the catheter is placed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wolvek (US 4,444,186), Harrison et al (US 5,554,119), Yock (US 5,300,085), Miraki (5,318,535) all disclose a balloon angioplasty catheter with a perfusion lumen.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn L Thompson whose telephone number is 703-305-3286. The examiner can normally be reached on 8:30 AM - 6:00 PM: 1st Friday Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

KLT

November 1, 2002

KLT

Michael J. Hayes

MICHAEL J. HAYES
PRIMARY EXAMINER